IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1120 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDRAKANT NENSIBHAI MEHTA

Versus

MANHARLAL NENSIBHAI MEHTA

Appearance:

MR SURESH M SHAH for Petitioner Nos. 1-3

MR MEHUL S SHAH for Petitioner Nos. 1-3

M/S.VYAS ASSOCIATES for the Respondent.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/03/2004

ORAL JUDGEMENT

The petitioners are the original plaintiffs of Regular Civil Suit No.92 of 1997, which is pending before the Small Causes Court, Rajkot. In the said suit, the present petitioners gave an application for interim

injunction Exhibit 5. The trial court granted the injunction in favour of the petitioners-original plaintiffs. The present respondent thereafter preferred an appeal under Order 43 of the Code of Civil Procedure, being Civil Miscellaneous Appeal No.91 of 1998. The appellate court allowed the said appeal and vacated the injunction granted by the trial court. It is the said order of the appellate court which is impugned in this revision.

Considering the nature of the order, it is not in dispute that the same is passed at an interlocutory stage and the suit is still pending before the trial court. In view of the amendment in Section 115 of the Code of Civil Procedure, revision against such an interlocutory order is not maintainable. This CRA is accordingly rejected on the ground that it is not maintainable. Rule is accordingly discharged. No costs.

It is clarified that this Court has not expressed any opinion on the merits of the issue in any manner. It is clarified that since the CRA is not maintainable, the petitioner is at liberty to file a substantive Special Civil Application under Article 227 of the Constitution of India, for challenging the impugned order, if the petitioners are desirous of filing such petition. Mr.Shah, learned Advocate for the petitioners, submitted that since interim relief was granted by this Court at the time of admitting the CRA and since the petitioners would like to prefer a Special Civil Application, challenging the impugned order, the interim relief may be continued. Since this revision is not entertained on the ground that it is not maintainable, and considering the fact that interim relief is in force since long, the same is ordered to be continued till 5th April, 2004.

Record and Proceedings which were called for by this Court are ordered to be sent back to the trial court without any delay.

9th March, 2004 (P.B. Majmudar, J.)

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(apj)